

The NEPA Process

Compliance with Section 102(2)(c) of NEPA is carried out through a formal process (see figures 3.1, 3.2, and 3.3). When the courts find inadequate NEPA compliance, it is generally because of procedural errors by the Federal agency, rather than the judiciary's taking issue with a particular method of analysis. The courts are going to determine if Reclamation complied with the required process but will usually defer to Reclamation on issues of analysis and technical knowledge, provided that differing opinions are documented.

3.1 Types of Compliance Documents: Categorical Exclusion, Environmental Assessment/Finding of No Significant Impact, Environmental Impact Statement

NEPA compliance is triggered by a discretionary Federal action. If no Federal action is being taken or proposed by Reclamation, no NEPA document is required. The nature of the Federal action may be construction of a project, the granting of a permit to a third party, the provision of Federal funding in a third-party project, or any other action where a Federal decision is required.

Once it has been established that there is a proposed Federal action, the next step is to determine relevant environmental issues, the potential magnitude of environmental impacts, and the appropriate level of NEPA documentation. It is important to remember that, to implement the intent of NEPA, the environment should always be considered. Based on an early evaluation of a proposed action's environmental effects, the documentation for the action can be placed in one of the following three categories.

3.1.1 Categorical Exclusions

(40 CFR 1508.4; 516 DM 2.3 A; 516 DM 2, Appendix 1; 516 DM 6, Appendix 9.4; and 516 DM 2, Appendix 2)

The first type of compliance documentation is the CE. Existing CEs are listed in the Departmental Manual (figures 3.4, 3.5, and 3.6). A CE applies to actions that do not individually or cumulatively have a significant effect on the human environment. A CE excludes certain Federal actions from further NEPA documentation because the actions have been determined in a public process to have no significant effect on the environment, nor do they involve unresolved conflicts concerning alternative uses of available resources. There may be cases in which a CE appears to apply but, because of particular circumstances such as controversy, action-specific environmental circumstances, or cumulative effect in relationship to other actions, a different type of NEPA compliance documentation may be more appropriate.

A CE can only be used for actions specifically defined by the exclusion category. The CEs and the procedures for using them, including actions for which a CEC is and is not necessary, are discussed in chapter 5.

3.1.2 Environmental Assessment/Finding of No Significant Impact *(40 CFR 1501.3 and 1508.9, and 516 DM 3.1 through 3.6)*

The next type of compliance documentation is an EA. An EA is written for any action whose effects are undetermined and which may or may not require an EIS. An EA is used to clarify the issues and the environmental effects. Based on the EA, an EIS or a finding of no significant impact (FONSI) will be prepared. In addition, an EA-type process may be used for evaluating any action at any time to assist in planning and decisionmaking.

An EA is a concise document prepared with input from various disciplines and interested parties that generally provides sufficient evidence and analysis for determining whether to prepare an EIS or a FONSI. Obviously, this conclusion cannot be reached without having knowledge of what the issues are, as determined by appropriate Federal, State, and tribal entities as well as the general public. The decision to conduct the next level of evaluation (an EIS) can be made any time there is enough information to indicate that significant impacts may occur or that sufficient controversy (factual disputes)

about the impacts exists. Mere opposition does not necessarily mean there is sufficient controversy. The choice to prepare an EA does not guarantee that a FONSI will be prepared.

If a decision has already been made to prepare an EIS, then an EA should not be completed. More detail on circumstances when an EA is appropriate and a detailed discussion of EA procedures and the FONSI are found in chapter 6.

3.1.3 Environmental Impact Statement

(40 CFR 1502.1 through 1502.25 and 516 DM 4.1 through 4.24)

An EIS is normally required for a major Federal action whose environmental effects are potentially significant. Major actions normally requiring the preparation of an EIS are listed in Departmental Instructions 516 DM 6 (attached). CEQ regulations point out that “major,” in the term “major action,” reinforces but does not have a meaning independent of “significant” (40 CFR 1508.18). A major action is one that significantly affects the quality of the human environment. The major nature of an action, and its resulting significant environmental effects, may be apparent from the beginning of the study. For actions of this sort, an EIS is needed and an EA need not be prepared.

Some latitude exists in determining those actions which require an EIS. The determination is the result of many factors, including controversy, environmental considerations, project history, and the language in the regulations (see also 40 CFR 1502.4; 40 CFR 1508.18, Major Federal Action; 40 CFR 1508.23, Proposal; and 40 CFR 1508.27, Significantly).

Chapters 7 and 8 discuss EIS requirements in detail.

3.2 When NEPA Documentation Is Not Required

The application of NEPA is very broad. CEQ regulations (40 CFR 1508.18) list

. . . new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by Federal agencies, new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals . . .

as Federal actions to which NEPA applies.

First, no NEPA documentation is needed if there is no Federal action or no Federal discretion. If there is a Federal discretionary action and it is **not** on the list shown below, it will likely require some NEPA documentation. If a proposed action is on the list, environmental concerns should still be considered in decisionmaking and regional and other environmental staff consulted as appropriate before the decision is made that an action is exempt from NEPA documentation. The following list depicts NEPA exemptions:

- Congressional legislation expressly exempting specific projects (the Alaska pipeline) or actions (The Disaster Relief Act of 1974) from NEPA compliance (note that other environmental acts may still apply, depending upon the specific situation)
- Funding assistance solely in the form of general revenue sharing funds (unrestricted block grants under the State and Local Fiscal Assistance Act of 1972) with no Federal control over the subsequent use of such funds
- Judicial or administrative civil or criminal enforcement actions such as levying fines or sentencing
- Internal administrative actions, including standard materials acquisition and use, as well as organization and administrative changes
- Actions by others that do not involve Federal monies, facilities, or approval
- Management decisions on ongoing Reclamation projects where there would be no major changes in existing operations (i.e., maintenance of the status quo)

Be aware that NEPA compliance documents are generally required for every other action.

3.3 Apply NEPA Early (40 CFR 1501.2, 1501.4, and 516 DM 2.2)

CEQ regulations state that:

Agencies shall integrate NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays, . . . and to head off potential conflicts (40 CFR 1501.2).

The preparation of documents is **NOT** the same thing as applying NEPA early. Environmental considerations should be taken into account as soon as a proposal is identified (40 CFR 1508.23). Even when no formal NEPA procedure is required, the policy of NEPA should be integrated into the earliest discussion. In some cases, the activity may be already covered by previous NEPA documentation, but this assumption should be confirmed early in the process. Regional environmental staff should be asked if there is any question about compliance.

Reclamation personnel should begin developing environmental information at the earliest reasonable time so that environmental data are used in the decisionmaking process. Consideration of environmental information and issues should begin with the identification of a need that Reclamation contemplates addressing. Sufficient environmental information should be developed to ensure that proposals are compatible with the purpose and policy of NEPA.

3.4 Scoping

The purpose of scoping is to *obtain information* that will focus the NEPA document (whether an EA or EIS) on the significant issues. Information can come from a variety of sources, and every effort should be made to contact all parties who may have information on the proposed action. Scoping (required by NEPA implementing regulations at 40 CFR 1501.7) is similar to, and closely related to, public involvement. Information gathered either identifies or can be used to identify:

- Significant resource issues
- Study participants
- The potentially affected geographical area
- Resources available for the study
- Study constraints
- Alternatives to be considered

3.4.1 Scoping Defined

Scoping is required by NEPA regulations (40 CFR 1501.7). It is to be “an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action.” It includes all types of information-gathering activities and should not be viewed as a process limited only to a public meeting forum. Information can be obtained in a variety of

manners and forms; contacts with other agency personnel, water districts, citizens groups, and other interested individuals and parties are all scoping activities.

Scoping activities should be flexible and tailored to the action being considered. For example, scoping activities for a CE may be limited to intra- and interagency contacts such as those with the U.S. Fish and Wildlife Service (Service), U.S. Army Corps of Engineers (Corps), and the State Historic Preservation Officer (SHPO). If warranted by the action, it may be beneficial to contact additional individuals and groups for information.

Information-gathering activities can expand as project needs increase. For example, scoping activities for an EA would likely include the intra- and interagency contacts routinely made for a CE. In addition, the action may warrant a media program that solicits input, including a series of newspaper articles or television and radio presentations that provide current information and request assistance in clarifying issues. Some Reclamation regions, recognizing the benefits of involving the public early in the scoping process, require a public notice for the development of an EA. The action should dictate scoping activities, and if a public notice and/or public meetings facilitate information-gathering, such activities are encouraged.

Scoping activities associated with an EIS may include any of the activities previously described and any others necessary to gather all relevant information. For highly visible actions, a newsletter, or even a home page on the World Wide Web, may facilitate information gathering. If a programmatic or highly controversial EIS is undertaken, the Commissioner's Office should be involved early in scoping activities. According to NEPA regulations, a notice of intent (NOI) to prepare an EIS must be published in the *Federal Register* prior to initiating scoping. However, some information gathering is usually necessary before publication of the NOI to assure that the interested publics understand the action and can effectively provide additional information. Depending on the action, NOI may be an effective tool to facilitate scoping at other levels of compliance, such as an EA.

3.4.2 Public Meetings

CEQ regulations do not require public meetings for scoping activities. However, public meetings can be an effective communication tool as well as an effective mechanism for gathering information. The use of public meetings as a scoping tool is strongly encouraged. Scoping generally involves a series of intra-agency, interagency, and public

meetings, or it may consist of a series of smaller meetings with interested groups, agencies, or even individuals, including opponents. Scoping meetings should be held in the project impact area. Interested Federal, State, tribal, and local agencies; interested citizens; and environmental groups should be invited to participate.

3.4.3 Benefits of Scoping

At the beginning of this section, the purpose of scoping was described as information gathering. Scoping should also be viewed as a “value-added” process. Effective scoping identifies the publics’ concerns and, together with agency considerations and input from technical staff, defines significant resource issues. Reclamation can then focus on the defined issues and avoid encyclopedic discussions of topics that are irrelevant to the proposed action. The more an analysis can be focused on significant resource issues, the better the exchange between the publics and the decisionmakers. Issues that are not significant, or that have been covered in the other documents, should be handled by reference or the depth of coverage reduced. Often, it is as important to understand what are not significant resource issues as it is to identify those that are.

Scoping activities help to identify interested and/or potentially affected parties. Detailed records of contacts made during scoping activities become part of the project files and can become an important reference. Scoping can also assist in identifying resources for the study, including staff time, data, and funding.

By defining significant resource issues, scoping activities help identify the geographical area potentially affected by the proposed action. Issues can often be associated with physical areas, although impact areas may vary by resource. For example, changes in dam operations may affect biological resources for many miles downstream, but the same changes could affect hydropower in several States.

One of the most valuable aspects of scoping lies in the identification of study constraints. This is an especially important consideration whenever endangered species are involved. Endangered species issues can become the major considerations within proposed actions, and the constraints associated with such considerations should be identified and addressed early in the scoping process.

The scoping process will also serve to identify those situations in which Reclamation's proposed action fails to rise to the level of Federal involvement which would require an extensive analysis under NEPA. In situations in which a non-Federal action involves a

Reclamation decision that is the **only** Federal decision involved, and in which Reclamation's decision affects only a small portion of the overall action, it may be within reasonable agency discretion to limit the NEPA review to those parts of the action directly related to Reclamation's decision. This recognition of the overwhelmingly private nature of the action avoids the "federalization" of the action (see 52 *Federal Register* 22519 [June 12, 1987]). Such a situation could, for example, involve proposals to cross Reclamation properties that are merely a link in a transportation or utility transmission project. Great care should be taken to ensure that the **entire** Federal relationship with the action (not just Reclamation's) has been analyzed before concluding that the appropriate scope of the NEPA analysis will not include the entire project. It is important to realize that the type of actions under discussion (where Reclamation's analysis could be limited) would not involve Reclamation project operations or Reclamation project water.

3.5 Public Involvement

Public involvement means public participation in planning and the decision process. It centers on effective two-way communication among the partners, agencies, organizations, and all the various stakeholders. *Public involvement means involving the affected people and groups in the process.*

3.5.1 Public Notification

Reclamation shall involve the appropriate public in preparing NEPA documents. It will provide public notice of NEPA-related hearings, public meetings, EAs, FONSI, and the availability of NOIs and EISs. Reclamation will provide information to those who request it.

In the case of an EIS, a *Federal Register* notice shall be published when draft environmental impact statements (DEIS) and final environmental impact statements (FEIS) become available and before public hearings. A similar *Federal Register* notice for a draft EA, final EA, and FONSI may be desirable but is not required. News releases are issued on each *Federal Register* notice. When a *Federal Register* notice is not required (for EAs, for example), the type of public notice will depend upon the issues and scope. This decision should be made on a case-by-case basis.

Public involvement continues throughout the planning and implementation of the action and, thus, includes all scoping activities. After a major scoping activity, Reclamation should implement some means of informing the public participants of the decisions made. It may be appropriate to prepare a public document that identifies how the issues raised by the public will be handled and how data will be developed. The document (perhaps a newsletter) should be distributed to all individuals who participated in the scoping meetings and to the news media.

3.5.2 A Continuing Process

Reclamation's public involvement program should begin early so that environmental concerns can be discussed with the public as the plans are developed and evaluated. However, starting immediately with a forum for the general public may result in quite a bit of confusion for all. It is usually better to go in a stepwise fashion as the process continues. This approach should also help determine the appropriate level of NEPA compliance.

Reclamation environmental personnel and other disciplines (the interdisciplinary team) should be involved early in the planning process. They can help identify important resources, opportunities, and potential difficulties and any known environmental constraints so conflicts can be avoided (516 DM 1.6 and 301 DM 2). For example, there may be endangered species or sensitive wetland areas that should be avoided, or there may be a nonstructural way to accomplish the project purpose and satisfy the identified needs.

After Reclamation's environmental personnel are involved, other agencies and partners with environmental expertise and regulatory agencies should be involved in plan formulation. When there is a specific need and purpose, a wide variety of the publics—such as local governments and citizens' groups—should be contacted to identify their questions and concerns and to begin NEPA documentation. This must be done with the honest intent to use the publics' input and to address the publics' concerns.

The participation of project sponsors, cooperating agencies, tribes, and partners in the public involvement process is encouraged. They should be present at important scoping meetings, public hearings, and other events to provide information concerning non-Reclamation objectives associated with the proposed action.

Public involvement activities are required by CEQ regulations (40 CFR 1506.6(a)), which state: "*Agencies shall: Make diligent efforts*

to involve the public in preparing and implementing their NEPA procedures.” The public should be involved on a continuing basis throughout project planning to build consensus for the final decision. It is not always easy to seek out those with differing viewpoints, but it is part of the job at Reclamation to be aware of all points of view and to work with all concerned individuals and the public. Initial efforts spent listening and being open to other ideas should prevent many headaches later in the process. Additionally, the intensity of public interest can help define the appropriate level of NEPA compliance documentation.

3.6 Coordination

(40 CFR 1501.6, 1502.5, 1502.25, 1506.6, and 1500.2(c))

Coordination is closely related to scoping and public involvement and continues throughout the process.

The NEPA process is to be an open process, integrating the provisions of other environmental statutes and the needs of interested parties. While the extent and formality of the coordination will vary, the need to coordinate with other interested parties is a constant feature of NEPA. The NEPA regulations define a special relationship for some agencies, i.e., a cooperating agency (40 CFR 1501.7, 1508.5) (see below).

Coordination also includes Federal, State, local, and tribal entities that are not cooperating agencies and any appropriate public. Such entities with a potential interest in the proposed action should be notified early in the process and given opportunity to provide input. NEPA activities should be coordinated with other environmental requirements so that their requirements are, when possible, met concurrently rather than consecutively. This specifically includes the Fish and Wildlife Coordination Act (FWCA), the Clean Water Act (CWA), the National Historic Preservation Act of 1966 (NHPA), the Endangered Species Act of 1973 (ESA), and other environmental review laws and Executive orders.

3.7 Lead and Cooperating Agencies

(40 CFR 1501.5, 1508.5, 1508.16, 516 DM 2.4)

If more than one Federal agency either proposes or is involved in the same action, or is involved in a group of actions directly related to each other, a lead agency or joint lead agencies are selected to supervise the preparation of the NEPA document (EIS or EA).

Reclamation, when acting as lead agency, should request any Federal agency that has jurisdiction by law or special expertise concerning any aspect of the proposed action to be a cooperating agency. Agencies with closely related decisions having the same general scope may also be invited to be cooperators, and an agency may request Reclamation to designate it a cooperating agency. Non-Federal entities, such as tribes, local governmental entities, or States, can also be cooperators. It is advantageous to invite them to become cooperators at the earliest opportunity. (See ESM 99-2, attached.)

Appendix II of CEQ's regulations lists Federal and State agencies with jurisdiction by law or special expertise on environmental quality issues (attached).

Reclamation should use the environmental analysis and recommendations of the cooperating agencies to the maximum extent possible.

A cooperating agency may decline Reclamation's request to assist in preparing an EIS because of previous program commitments. A copy of such a reply shall be sent to CEQ (40 CFR 1501.6(c)) with a copy to the Office of Environmental Policy and Compliance (OEPC) of the Department of the Interior.

Reclamation should actively seek cooperating status on other agencies' EISs where the activities or the impacts associated with these activities will have the potential to affect Reclamation programs or facilities.

3.7.1 Reclamation as a Lead or Joint Lead Agency

The lead agency has ultimate responsibility for the content of any NEPA document prepared. The lead agency also is responsible for basic scope, definition of purpose and need, alternative development, final document approval, and other decisions within the process. When joint lead agencies are selected, one agency should be designated as responsible for printing and filing the document.

When Reclamation agrees to assume lead status or participate in a joint lead-agency situation, it is recommended that a memorandum of understanding (MOU) among all parties be developed to clearly identify respective responsibilities and funding commitments. In lieu of the more formal MOU, Reclamation may choose to solicit letters of commitment from joint leads and cooperators. The appropriate Solicitor's Office should review MOUs before they are signed.

Reclamation should use the environmental analyses and suggestions of joint lead agencies and cooperating agencies whenever possible and

appropriate to complete the NEPA document. However, Reclamation, as lead or joint lead, may choose to incorporate lengthy analyses by reference.

When Reclamation is a joint lead with one or more other Federal agencies, each lead agency should sign a separate ROD.

3.7.2 Reclamation as a Cooperating Agency

When requested by a lead agency, Reclamation will seriously consider the request to be a cooperating agency based on jurisdictional responsibilities, project effects, and any special expertise. Normally, Reclamation will actively seek cooperating agency status on other agencies' EAs or EISs where the activities or the impacts associated with these activities may affect Reclamation lands, waters, facilities, or programs.

Reclamation should enter into an MOU or provide a letter to the lead agency(s) describing what Reclamation's commitment is in the NEPA process (i.e., indepth analysis, writing sections of the document, and/or review of the document at various stages of its development). As noted above, where Reclamation is the lead (or joint lead agency), the appropriate Solicitor's Office should review MOUs before they are signed.

It is advantageous to Reclamation's interest to provide adequate input into the NEPA process and associated documents (i.e., EA and EIS) for which it is a cooperator so that all effects of the proposed action are presented in a complete, accurate, and unbiased manner. Reclamation may then adopt the NEPA process and document(s) for its follow-on actions without further indepth scoping, analysis, or public review. The public should be notified appropriately when this occurs.

3.8 Interdisciplinary Approach (Section 102(2)(a) NEPA; 40 CFR 1502.6)

Reclamation will use an interdisciplinary approach in preparing an EIS or EA, including individuals with NEPA, planning, operations, construction, and/or land management expertise, as appropriate. In achieving this broad interdisciplinary approach, Reclamation may use agency staff, other agencies or public groups with special interest or expertise, and/or prepared studies and documentation of issues.

In addition, Reclamation may wish to contract with public or private entities for studies and reports on special and unique issues discovered during the scoping process.

The documents shall be prepared to ensure the integrated use of the natural, social, and environmental sciences. The disciplines of the preparers shall be appropriate to the scope and issues identified in the scoping process.

Lengthy discussions in the text on methodologies of the various disciplines should be avoided unless absolutely necessary to understand the analysis and its conclusions. Otherwise, explanation of methodologies may be appended if it is determined to be necessary for adequate review of the document.

3.9 Analysis (40 CFR 1502.16)

The analysis shall focus on:

- The environmental impacts of the proposed action
- Any adverse environmental effects which cannot be avoided should the action be implemented
- The relationship between short-term uses of the environment and the maintenance and enhancement of long-term productivity
- Any irreversible and irretrievable commitments of resources which would result from implementation

The analysis should address direct and indirect impacts, conflicts with existing land use plans, energy requirements, mitigation, and natural or depletable resource requirements, and conservation potential.

3.9.1 Appropriate Level of Analysis

The NEPA process shall focus on determining significant impacts. As a result, the data and analysis developed shall be commensurate with the significance of the impact. Additionally, the different types of NEPA compliance (EA and EIS) will likely present different levels of analysis. In all cases, however, the analysis should be in sufficient

detail to determine if any significant impacts would result from the action. This detail will vary with the scope, the proposed action, and with the level of potential impacts for each technical area.

3.9.2 Incomplete or Unavailable Information (40 CFR 1502.22)

Reclamation will make a diligent attempt to obtain the information necessary to include a full evaluation of all significant impacts in NEPA documents. Data and new information needs should be identified early enough in the process to enable timely completion of required studies and integration of the information.

Reclamation should not move ahead on proposals for which limited relevant information prevents the meaningful analysis of alternatives, impacts, or the means to mitigate impacts. If information cannot be secured (e.g., due to scientific uncertainty), the document will make it clear that such information is lacking, will give the reason why it is not possible to include the information, and will include an analysis based upon the best information available.

Some information may not be available to Reclamation because it is proprietary information maintained by an applicant. Reclamation will work closely with the applicant on questions that deal with proprietary issues or information. CEQ regulations are not interpreted as requiring the release of proprietary information; however, NEPA is a full-disclosure law, and Federal agencies are expected to have and report sufficient information on the project to allow informed public review and to afford the decisionmaker the capability to make a responsible decision.

3.10 Environmental Commitments (40 CFR 1505.3)

Environmental commitments are written statements of intent made by Reclamation to monitor and mitigate for potential adverse environmental impacts associated with any phase of planning, construction, and operation and maintenance (O&M) activities. Environmental commitments are actions that:

- Restore or enhance environmental quality
- Are directly controlled by Reclamation

- Are indirectly controlled via a written agreement with another party to carry out the action

Reclamation is obligated to fulfill all commitments developed during any contracting, planning, design, construction, or O&M process (including those made on behalf of loan applicants, permittees, or lessees) that are incorporated into Reclamation's decision on the action. Reclamation's obligations are defined by the final decision. For NEPA documents, that generally means in the ROD or FONSI.

Environmental commitments may be documented in any NEPA compliance activity through the use of a CEC, EA, FONSI, EIS, or ROD. Commitments may be included which state how Reclamation will comply with various statutes and regulations, including:

- Clean Water Act
- Clean Air Act
- Endangered Species Act
- National Historic Preservation Act
- Executive orders
- State, tribal, and local laws, rules, and regulations

Reclamation shall:

- Honor and implement all environmental commitments identified in the decision document
- Budget and allocate funds necessary to carry out the commitments as scheduled
- Monitor the effectiveness of environmental commitments
- Document the results

The implementation of environmental commitments can be delegated to a third-party contractor, permittee, lessee, or loan recipient for individual projects or actions. Such delegation of responsibility will be in writing. However, compliance with the Environmental Commitment Program remains the responsibility of the appropriate Reclamation manager.

Program activities should normally be budgeted and allocated in project or program accounts. However, when appropriate, the main financial responsibility may fall on an applicant, permittee, or lessee.

3.11 Emergency Actions (40 CFR 1506.11, 516 DM 5.8)

In all emergency actions, the first and most important consideration is the protection of life and property. Survival and emergency repair have the highest priorities. Secondary considerations are the mending of damaged facilities and resumption of normal activities, including NEPA actions and notification to CEQ. (Emergencies should be defined as sudden occurrences that would not normally develop over a period of weeks; the responsible program official should make the determination in consultation with the regional environmental staff that an emergency exists.) If time is available, CEQ should be notified before taking action and alternative compliance arrangements worked out. If the emergency is imminent and the emergency action has potentially significant impacts, managers in the regional office or area office should notify the Commissioner's Office, the Office of the Assistant Secretary - Water and Science (ASWS), the Solicitor's Office, OEPC, and CEQ as soon as possible that typical NEPA compliance is being waived.

As soon as practicable after the emergency has passed, appropriate NEPA compliance should be initiated to address all remaining actions that may need to be carried out (e.g., cleanup, repairs, and maintenance). The responsible program official should coordinate with CEQ to determine if a report should be prepared. If deemed appropriate, such a report would document the actions taken, environmental impacts which resulted, and what mitigation measures were (or will be) taken.

3.12 Adoption of Other Documents (40 CFR 1500.4(n), 516 DM 3.6)

CEQ regulations (40 CFR 1500.4(n)) indicate that Federal agencies shall reduce excessive paperwork by adopting appropriate environmental documents prepared by other agencies.

3.12.1 Adoption of Federal Documents

The adoption of other Federal environmental documents is encouraged to avoid duplication. However, one basic premise of adopting documents is that the adopting agency must make its own independent review of the document and take full responsibility for its scope and content.

An EIS prepared by another agency may be adopted by Reclamation if, upon independent evaluation by the regional or area office, it is found to comply with the guidance provided in this handbook, Departmental Manual requirements, and CEQ regulations. In general terms, there are three situations in which adoption of an EIS is appropriate. These are situations when:

- *Reclamation participated as a cooperating agency.*—In this case, Reclamation, upon reviewing the document and ensuring that its NEPA procedures have been satisfied, simply adopts the FEIS and issues its own ROD.
- *Reclamation was not a cooperating agency but is undertaking an activity that was the subject of an EIS.*—In this rare case, Reclamation, after reviewing the document and ensuring that its NEPA procedures have been satisfied, would adopt the EIS, recirculate it as a FEIS, and issue its own ROD.
- *Reclamation's proposed action is not substantially the same as that covered in the EIS.*—In this case, Reclamation may adopt the EIS (or portions thereof) and recirculate it as a draft prior to completing an FEIS and issuing a ROD. Note that it is more common to incorporate relevant information by reference in a new Reclamation document.

Adoption of EAs is not specifically addressed by CEQ regulations; however, the same objectives as those for adopting EISs apply. CEQ encourages Federal agencies to develop mechanisms to adopt EAs prepared by other agencies. Reclamation's guidelines for the adoption of EAs of other agencies are that:

- Reclamation will independently review the document for compliance with all of Reclamation's NEPA procedures.
- If the document is adequate, Reclamation may prepare a FONSI wherein the EA is adopted. Reclamation would take full responsibility for its scope and content. The FONSI should be available to the public for at least 30 days before a final decision is made.
- If the document is not adequate for Reclamation's specific action, Reclamation could supplement (or rewrite) the EA prior to preparing a FONSI.

3.12.2 Use of Non-Federal Environmental Documents

While the use of non-Federal environmental documents in Reclamation's NEPA compliance activities is encouraged, the distinction should be kept in mind between environmental documents and documents prepared pursuant to NEPA. In general, non-Federal environmental documents may be used as a basis for preparing NEPA documents, incorporated by reference, or, in certain cases, adopted as EAs.

There is no provision in CEQ regulations for adopting a non-Federal document as an EIS. If a non-Federal document had been prepared to the equivalence of an EIS, Reclamation could use that document as a DEIS after first ensuring that the document met all NEPA and Reclamation procedural requirements. All requirements for completing an EIS would need to be met, including issuing a NOI and scoping. In effect, the non-Federal document would be the equivalent of a DEIS prepared under contract for Reclamation and, from a procedural aspect, would need to be treated in the same manner.

Concerning EAs, a non-Federal document may be adopted after independent review by Reclamation to ensure that all NEPA and Reclamation procedures relating to EAs have been met. Reclamation would take full responsibility for its scope and content. Upon completion of this review, Reclamation may issue a FONSI.

3.12.3 Eliminate Duplication with State, Tribal, and Local Agencies (40 CFR 1506.2, 516 DM 4.18)

Reclamation shall also cooperate with State, tribal, and local agencies to reduce duplication of NEPA and comparable requirements unless specifically barred from doing so by law. Such cooperation shall include joint planning, joint environmental research and studies, joint public hearings, joint EAs, and joint EISs. In these instances, Reclamation and other Federal agencies and one or more State, tribal, or local agencies could be joint lead agencies (see section 3.7 and 516 DM 2.4); Reclamation would be the NEPA lead agency, and the other agencies would take the lead on State/tribal/local requirements.

In instances when State or tribal laws or local ordinances have environmental compliance requirements in addition to, but not in conflict with, NEPA, Reclamation shall cooperate in fulfilling these requirements, as well as those of Federal law, so that one document will comply with all applicable laws and regulations.

An EA or EIS shall discuss any inconsistencies between a preferred alternative and approved State, tribal, or local plans and laws. Where an inconsistency exists, the document should describe the extent to which Reclamation will modify its proposed action to reconcile it with the approved State, tribal, or local plan or law (40 CFR 1506.2, 516 DM 1.5C).

3.13 Integrating Related Environmental Legislation and Requirements

To the fullest extent possible, the NEPA process will integrate the requirements of other statutes, such as the FWCA, NHPA, ESA, and other laws and EOs. Some interpretations of these acts define the concepts of no action, impacts, and scope differently than does NEPA. It is important to resolve these differences early in the process so that the environmental requirements are effectively addressed in one process with minimal redundancy.

Completing an EA or an EIS does not guarantee compliance with other environmental laws. Documentation of compliance with related environmental laws, rules, regulations, and EOs should be integrated to the fullest extent possible into NEPA and planning processes. For example, showing anticipated impacts to wildlife, water quality, and cultural resources and some possible mitigation measures in an EIS should include the coordination and approvals needed for compliance with the requirements of the FWCA, ESA, and CWA (Section 404), or NHPA. If these are treated as separate actions, however, delays can result, leading to additional costs and damage to public relations. At a minimum, the status of compliance should be documented in any EA or EIS. Regional or Commissioner's environmental staff can help organize Reclamation's compliance with the various environmental laws under the NEPA umbrella and determine which laws apply to specific actions.

3.13.1 Fish and Wildlife Coordination Act (*Public Law 85-624, as amended*)

Section 2 of the FWCA of 1958 states that fish and wildlife conservation shall receive equal consideration with other project purposes and will be coordinated with other features of water resources development projects. The specific wording of Section 2, which is the trigger mechanism for consultations under the FWCA, is as follows:

. . . whenever the waters of any stream or other body of water are proposed or authorized to be impounded, diverted, the channel deepened, or the stream or other body of water otherwise controlled or modified for any purpose whatever, including navigation and drainage, by any department or agency of the United States, or any public agency or private agency under Federal permit or license, such department or agency first shall consult with the United States Fish and Wildlife Service . . .

The FWCA specifically identifies the Service as a point of consultation. However, Reclamation should also consult with the National Marine Fisheries Service (NMFS) for activities falling under the purview of the FWCA that affect species under their jurisdiction (in most Reclamation actions, these species will be anadromous fish). The FWCA also states that Reclamation is authorized to provide funding to the Service or NMFS.

While it is encouraged that Reclamation coordinate with the Service and/or the NMFS for any activities that affect fish and wildlife, it is recognized that this consultation is not always required by the FWCA.

Compliance with the FWCA should be initiated early in the process. Serious consideration should be given to designating the Service as a cooperating agency and involving them closely in the analysis. However, regardless of the Service's status as a cooperating agency, the FWCA requires their views to be considered when evaluating impacts and determining mitigation needs.

Interim FWCA reports and planning aid letters addressing impacts of various alternatives and potential mitigation measures can be obtained during the NEPA process to aid in the identification/selection of alternatives. The type of reports/analyses prepared by the Service can be structured so that they are totally integrated into the NEPA process. In the case of an EIS, the final FWCA report should be structured in such a manner that it specifically addresses the preferred alternative and also provides coverage for any decisions regarding the proposed action that may be included in the ROD.

While procedurally there should not be any difficulty with integrating NEPA and the FWCA, there may be difficulties with integrating the completion of the FWCA report with timing requirements of NEPA documents. This is the type of situation that must be addressed on a case-by-case basis and negotiated between the responsible Reclamation and Service offices. The Service must be allotted sufficient time to prepare any required reports/studies, and this will require planning on the part of the Reclamation project manager.

Any FWCA report should be made a part of reports being prepared for water development projects. Reclamation shall make every reasonable effort to include such FWCA reports/recommendations in both draft and final NEPA documents. In some cases, FWCA reports can be in the form of memoranda or similar documents commenting on proposed projects. A FWCA report need not involve a lengthy, time-consuming process. This is especially true in situations involving minor projects but may also apply to larger projects in which Service considerations have been fully integrated into the planning process. Regardless of the scope of the proposed action, the effective involvement of the Service reduces the time needed for a FWCA report to be prepared.

In the event a FWCA report is not completed prior to the completion of a NEPA document, there is risk involved from two perspectives:

(1) Reclamation may not have complied with the requirements of the FWCA and (2) information provided in a FWCA report after completion of a NEPA document may necessitate modification and recirculation of that document or preparation of a new NEPA compliance document. Reclamation should make a good-faith effort to ensure, to the best of its ability, that the Service has the opportunity to have its views accompany NEPA compliance documents on water development projects. If a decision is made to complete a NEPA document without a final FWCA report, Reclamation should have documentation prepared to explain the rationale for that decision. Without a final FWCA report, the Service's recommendations, if available, should be incorporated in the final NEPA document.

Recommendations provided pursuant to the FWCA are not requirements, and Reclamation can choose to implement those that are found to be appropriate. Nevertheless, FWCA recommendations should be given strong consideration for implementation. Written rationale should be included in the final NEPA document and/or the ROD regarding decisions not to implement Service recommendations.

3.13.2 Endangered Species Act (Public Law 93-205, as amended)

Special attention must be given to the integration of NEPA and the ESA. Section 7(a)(2) of the ESA requires consultation with the Service and/or NMFS for any Federal action which may affect a species listed as threatened or endangered (listed species). This consultation process may result in the Service and/or NMFS issuing a biological opinion containing actions to be undertaken to avoid jeopardizing a

species or to reduce the level of take that may occur when an action is implemented. Several specific areas should be considered in integrating the ESA and NEPA.

The initiation of Section 7 consultation requires the identification of a proposed Federal action. Therefore, consultation often is not initiated until the later stages of the NEPA process and usually only on the preferred alternative. This can create conflicts and delays in completing the NEPA process. One way to address this situation is to try to initiate informal consultation on the identified alternatives in order to narrow the issues and identify alternative-specific impacts and potential mitigation measures early in the process. On the other hand, it may be possible to identify the preferred alternative and initiate consultation earlier in the NEPA process. If a preferred alternative cannot be identified early, a biological assessment (BA) can address all the alternatives under consideration and can be used in informal consultation (prior to selection of the preferred alternative). After a preferred alternative is identified, the BA can be amended. This process may facilitate shortening the 135-day period that is provided for the Service and NMFS to complete a biological opinion following initiation of formal consultation.

A second consideration is that some of the actions emanating from a consultation process (i.e., agency commitments, Reasonable and Prudent Alternatives, and Reasonable and Prudent Measures) may require significant changes to alternatives. Thus, a biological opinion received late in the NEPA process can confound the NEPA process by presenting actions that have not been fully evaluated. The integration of NEPA and ESA in a timely manner is best accomplished by close and careful coordination and cooperation between Reclamation and the Service as early as practical in the NEPA process.

Another consideration concerns the definition and use of the term "baseline." The Section 7 implementing regulations state that the effects of a proposed action are added to the baseline to determine if the species is jeopardized by the totality of actions that may affect it. If the species is jeopardized by the proposed action (in addition to all other actions), then a jeopardy biological opinion would be issued. "Baseline" is described in the Section 7 regulations in a manner similar to that which would constitute a no action NEPA alternative. Differences may arise in the interpretation of these regulations and in determining the mitigation responsibilities under the Section 7 analysis.

Because of these differences, Reclamation discourages the use of the term baseline in the NEPA context. In the NEPA context, the effects are measured against the no action alternative (which may or may not be the same as the affected environment). Generally, Reclamation

adheres to the basic approach of determining the impacts to listed species by an analysis of the impacts (direct and indirect) of Reclamation's action, from the present time forward. Reclamation fully supports addressing impacts related to the action under consideration. Reclamation generally does not support addressing impacts to listed species when those impacts are not related to the action under consideration.

It is advised that the terminology being used in connection with NEPA and ESA on a particular project be clarified early on in the environmental compliance activities so as to meld these two processes as much as possible and to avoid unnecessary confusion.

Finally, Reclamation, as practicable, shall examine opportunities for assisting the conservation and recovery of listed species even when these opportunities go beyond what is needed to mitigate effects of a proposed action. This concept of looking beyond the actions that may be embodied in a biological opinion is expressed in Section 7(a)(1) of the ESA: "*The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this [Act].*" This affirmative responsibility, along with the need to avoid jeopardy and to reduce incidental take, should be integrated into the analysis and development of alternatives for all Reclamation actions.

Endangered species actions that involve Indian tribal rights are separately addressed in Secretarial Order 3206 (attached).

3.13.3 Section 404 of the Clean Water Act (Public Law 92-500, as amended, 33 U.S.C. § 1344)

When undertaking a NEPA-triggering activity that may result in the discharge or placement of dredged or fill material into jurisdictional waters of the United States or otherwise requiring a Section 404 permit from the Corps, it is imperative that the development and consideration of alternatives for the NEPA process address the requirements of the *Guidelines for Specification of Disposal Sites for Dredged or Fill Material (Guidelines)* (40 CFR 230). The *Guidelines* are used by the Corps in determining whether or not the proposal is consistent with Section 404 and whether or not to issue a 404 permit. EPA also uses them in its oversight responsibility when reviewing the Corps' decisions. The most essential element of the *Guidelines* that

should be addressed early in the planning/NEPA process is the concept of the “practicable alternatives analysis.” This is especially true if the proposed activity is **not** a water-dependent activity.¹

According to the *Guidelines*, no discharge of dredged or fill material within waters of the United States will be permitted if there is a practicable alternative that would have a less adverse impact on the aquatic ecosystem. An alternative is considered to be practicable if it is available and capable of being carried out after taking into consideration cost, existing technology, and logistics in light of the overall project purpose. An alternative is not considered to be practicable if it would result in other significant adverse environmental consequences.

Before the Corps completes its evaluation of a 404 permit application for compliance with the 404(b)(1) *Guidelines* to determine whether or not to issue a permit, a public notice is issued providing interested agencies and persons an opportunity to comment on the application.² In practice, what may be considered a “significant adverse environmental consequence” by one reviewing agency may not be considered significant, or even adverse, by another. This may result in some agencies’ either not concurring with the elimination of alternatives considered to be not practicable or their insisting upon the consideration of other alternatives in the late stages of the process. The detailed information needed to prepare a 404 permit application is typically not available until a preferred alternative has been identified and the NEPA process is nearing completion. Being required to consider other alternatives (either new or previously eliminated alternatives) as a result of the public notice review process can cause delays in the project schedule. Therefore, it is imperative to engage the participation of key resource agencies in coordinating NEPA compliance activities (especially as they relate to the evaluation of alternatives). Resource agencies that routinely review 404 permit application public notices (State fish and game departments, EPA, and the Service, as well as the Corps) should be encouraged to participate on the project interdisciplinary team so that 404 permit-related issues can be resolved in a timely manner during the planning and NEPA processes.

¹ Water-dependent activities are those that must, by their very nature, be located in water. These include activities such as construction of river crossings, boat ramps, and dams.

² Some types of dredge or fill activities do not require public notice (see Nationwide Permits [33 CFR 330]).

The Corps is required to comply with NEPA prior to issuing a 404 permit. Reclamation should seek opportunities to prepare joint NEPA documents with the Corps, where possible, to avoid delays. These opportunities should be investigated early in the process.

Section 404(r) of the Clean Water Act provides for the exemption of a Federal project from the requirement of obtaining a 404 permit for the discharge of dredged or fill material when the project has been specifically authorized by Congress after certain requirements are met. This exemption is allowed only when a 404(b)(1) evaluation of the project is developed in accordance with the guidelines in 40 CFR 230. This evaluation must be included with the EIS for the project, along with EPA's and the Corps' evaluation of the 404(b)(1) evaluation, all of which are submitted to Congress. The submittal must be made prior to the discharge of dredged or fill material in connection with the construction of the project and prior to either the authorization of the project by Congress or the appropriation of funds for the project.

3.13.4 Cultural Resources Compliance

NEPA establishes a national policy by which to consider the environmental impacts of Federal actions. Among the responsibilities of the Federal Government established by the act is to “. . . *preserve important historic, cultural and natural aspects of our national heritage . . .*” (Section 101(b)(4), 42 U.S.C. § 4331).

Reclamation's responsibility for cultural resources compliance is based in large measure on the National Historic Preservation Act (Public Law [P.L.] 89-665, as amended) and its implementing regulations (36 CFR Part 800). As a matter of law, all Reclamation actions shall be in compliance with Section 106 of the NHPA, which requires Federal agencies to take into account the effects of any undertaking on cultural resources. Additionally, in compliance with 36 CFR 800.8, Reclamation shall appropriately coordinate compliance of Section 106 and NEPA. In addition to the NHPA, there are numerous other laws and regulations which make up Reclamation's cultural resources compliance responsibilities, including: American Indian Religious Freedom Act, Archaeological Resources Protection Act (ARPA), and Native American Graves Protection and Repatriation Act.

Reclamation manages and protects cultural resources in keeping with its mission and as required by Section 110 of NHPA and must be proactive in implementing cultural resources laws, regulations, and policies. Reclamation policy is to preserve cultural resources in place and, therefore, avoid adverse effects to the fullest extent possible.

However, after evaluation of all factors in an undertaking, Reclamation may determine that the public benefits of proceeding with the undertaking outweigh the adverse effects to cultural resources. When adverse effects cannot be avoided or are outweighed by public benefits, Reclamation will seek measures to reduce and minimize them. Treatment measures will be developed in consultation with SHPO, Advisory Council on Historic Preservation, appropriate Indian tribes, and other interested parties or persons and will be appropriate to the nature and significance of the historic properties in question (DM 426, DM 1.1, and 519 DM 1, Reclamation's Directives and Standards LND 02-01).

Cultural resources compliance is required regardless of the level of NEPA documentation that is required. Documentation prepared for NEPA compliance must demonstrate compliance with cultural resources laws as part of activity or program planning. The timing of cultural resources compliance may be a very important contributor to the success of an activity or program planning process, and it is most helpful when all parties agree up front to participate fully. To ensure that cultural resources management is fully integrated into Reclamation activities, cultural resources issues should be addressed at the earliest stages of planning. If such compliance is not completed prior to the conclusion of NEPA documentation, the NEPA document will contain commitments for Reclamation to complete the cultural resources compliance process.

A Reclamation action considered to be categorically excluded from review under NEPA in accordance with Reclamation procedures still requires Section 106 compliance. However, a program office may enter into a programmatic agreement with the Advisory Council on Historic Preservation that could specify activities that would be excluded from future Section 106 compliance. For actions involving EAs or EISs, the responsible official should ensure that the FONSI or ROD incorporates applicable mitigation measures related to adverse effects on cultural resources.

Completion of the compliance process involves extensive consultations with the SHPO, affected Indian tribes, affected Federal and State agencies, and interested parties. When a Reclamation activity affects Indian lands, Reclamation will invite the governing body of the appropriate tribe(s), to be a consulting party in the Section 106 process and to concur in any agreement. Reclamation also will invite the appropriate tribe(s) to participate as a consulting party or as a cooperating agency when an undertaking would affect cultural resources of value to that tribe which are on non-Federal lands.

Reclamation will consult with appropriate Indian tribes when there are planned excavations on, and removal of, cultural items from Reclamation lands. All archeological activities conducted by non-Federal entities and their employees shall require an ARPA permit prior to beginning the activity. In situations where the archeological activities are on tribal lands, tribal consent and proof of consultation are required. In addition, an ARPA permit, issued by the Bureau of Indian Affairs, is required prior to beginning the activity.

Section 110 of the NHPA requires special consideration of National Historic Landmarks, including consultation with the Advisory Council on Historic Preservation, and the Secretary of the Interior (Secretary) when a landmark is to be adversely affected. The identification and consideration of National Historic Landmarks should be incorporated into the applicable NEPA document.

Reclamation, in consultation with the Advisory Council on Historic Preservation and the National Conference of SHPOs, has established a Programmatic Agreement and implementation plan to deal with responses to major natural disasters or national security emergencies.

3.13.5 Indian Trust Assets

Indian Trust Assets (ITAs) are legal interests in property held in trust by the United States for Indian tribes or individuals, or property which the United States is charged by law to protect for Indian tribes or individuals. All Federal bureaus and agencies, including Reclamation, share a duty to act responsibly to protect and maintain ITAs. This duty, founded in law and restated in Departmental policy, requires Reclamation to carry out its activities in a manner which avoids adverse impacts to ITAs when possible. When adverse impacts cannot be avoided, appropriate mitigation or compensation will be provided.

Procedures for carrying out Reclamation's ITA responsibilities, insofar as they affect NEPA, are attached to this handbook. The procedures include, but are not limited to:

- An ITA question in the CEC.
- Required sections in EAs and EISs. When no ITAs are identified in or near the potentially affected area, a statement to this effect must be included.
- Public involvement activities.

- Notification in the *Federal Register* NOI and notice of availability (NOA).
- Consultation with potentially affected and interested Indian tribes, communities, and individuals in the review and distribution of EAs and EISs.
- Required narrative in the FONSI or ROD.

3.13.6 Indian Sacred Sites

Reclamation is required, to the extent practicable and consistent with essential agency functions (EO 13007, attached), to avoid adversely affecting the physical integrity of Indian sacred sites and to allow access by Indian religious practitioners to such sacred sites. Reclamation shall, where appropriate, maintain the confidentiality of sacred sites. As a result, any NEPA analysis should address Indian sacred sites by either: (1) clearly stating in the Affected Environmental section that neither Indian sacred sites nor access to such sacred sites will be affected; or by (2) presenting, in the appropriate section, analysis of impacts to Indian sacred sites and access to such sacred sites. Where appropriate to maintain confidentiality, the specific location of the sacred site should not be included in the NEPA document, even if impacts to the site or to access may occur. All practicable efforts should be used to avoid any negative impacts to either the physical integrity of the site or to access. When adverse impacts cannot be avoided, alternative access and protection, as practicable, shall be determined in consultation with the affected Indian tribes (as defined in EO 13007).

3.13.7 Environmental Justice

Executive Order 12898 established environmental justice as a Federal agency priority. All Federal agencies were directed to make environmental justice part of their mission. Four strategies have been defined for implementing the EO. These are:

- Promote enforcement of all health and environmental statutes in areas with minority and/or low-income populations
- Ensure greater public participation by minority and/or low-income populations

- Improve research and data collection relating to the health and environment of minority and/or low-income populations
- Identify differential patterns of consumption of natural resources among minority and/or low-income populations

Reclamation shall include a discussion of the potential impacts to minority and low-income communities in applicable NEPA documents. A line is included in the CEC to assure their consideration in actions that may qualify for an exclusion.

For EAs and EISs, potentially affected communities should be identified in the discussion of the affected environment. Potential impacts and reasonable mitigation options to low-income and/or minority communities should be analyzed and presented in the discussion of environmental consequences. The document should explicitly state if no such communities exist or if no such communities are expected to be affected in any disproportionate way.

For all Reclamation actions, scoping and public involvement activities shall be designed specifically to include all minority and/or low-income populations in the area that may be affected. Local and minority cultural and language needs should be considered and addressed in developing scoping and public involvement programs. Additional guidance on environmental justice and NEPA is available from CEQ.

3.13.8 Pollution Prevention

CEQ has prepared guidance (attached) to the Federal agencies on how to incorporate pollution prevention principles into planning and decisionmaking and on how to evaluate and report those efforts in NEPA documents. This guidance does not include new requirements for the NEPA process but does suggest ways that pollution prevention should be incorporated into existing procedures.

CEQ suggests that pollution prevention be specifically addressed when an EIS is scoped. This would encourage the identification of means to prevent pollution associated with the action.

Pollution prevention is defined in the guidance as any reasonable mechanism that avoids, prevents, or reduces pollutant releases other than traditional treatment at the discharge end of a pipe or stack. This definition agrees well with the definition in CEQ regulations defining mitigation (40 CFR 1508.20). Accordingly, pollution prevention activities should be an important component of mitigation in any NEPA analysis. Each alternative should include pollution

prevention considerations as practicable, and these considerations should be addressed in the Environmental Consequences section of the EIS.

CEQ regulations require the ROD to include a statement of whether or not all practicable means to avoid or minimize environmental harm have been adopted, and if not, why not, and also a discussion of a monitoring and enforcement program, if appropriate (40 CFR 1505.2(c)). The ROD is viewed by CEQ as an appropriate means to inform the public of the extent to which pollution prevention is included as a component of Federal action.

CEQ guidance focuses mostly on the appropriate discussion of pollution prevention in an EIS but also makes the point that a discussion of pollution prevention may also be appropriate in an EA. This is especially critical where pollution prevention measures contribute to a FONSI and are thus required to be part of the action.

Reclamation operates under and carries out a number of other processes and activities. Integrating NEPA into these may require special considerations. It is important to remember that the intent of NEPA is to ensure consideration of the environment in all processes and activities.

3.14 Administrative Record

In preparing an EA/EIS, the agency should compile an administrative record (either a FONSI or ROD) in support of its decision. The agency decisionmaking process under NEPA is an informal decisionmaking process. Although the informal record may vary, commonly, it is a chronological paper/computer trail tracing the NEPA process as it follows CEQ regulations for a particular action. The procedural record may include, but is not limited to: planning documents, notices, scoping hearings, EA/EIS preparation with supporting documents and studies, public comment and agency responses, FONSI/ROD, and implementation/monitoring, including Environmental Commitment Plans.

Creation and maintenance of the administrative record as a discrete data set, independent from dispersion in agency central files, has positive advantages for ready access, and it satisfies the NEPA requirement for public disclosure of the process. The record facilitates Freedom of Information Act (FOIA) requests on agency actions. The record is an information resource for preparation of new NEPA documents and a source for elements to be tiered to, or incorporated by, reference. The administrative record also plays an important role in

NEPA litigation. The typical lawsuit is a challenge to an agency's decision not to prepare an EIS or to the adequacy of an EIS. A plaintiff and reviewing court are generally not entitled to discover evidence or extend review beyond the administrative record if the record contains sufficient information to respond to the plaintiff's allegations. The potential for judicial review of any agency decision should require the creation and maintenance of an administrative record.

3.15 Reclamation Repository

There are many benefits to having all finalized NEPA documents generated in a particular region sent to one central location in that region. In most cases, the most logical place for the repository would be in the regional office. It is recommended that each region establish a procedure that would place a copy of every EIS and every EA produced in the region in one location within the regional office. The inclusion of CECs would also be useful.

FOIA requests are becoming commonplace, necessitating the efficient handling of substantial amounts of information. The regional offices are often given the responsibility to process these requests and, thus, would benefit greatly from having the applicable NEPA documents readily available. Similarly, most legal actions are handled at the regional level, and the availability of applicable NEPA documents would facilitate any Reclamation involvement.

The regional offices generally take the lead on developing large-scale programmatic NEPA documents such as EISs. These documents often require tiering (see section 7.3) and incorporation by reference of several related NEPA documents. Having a repository of all NEPA documents in one central location would substantially facilitate these efforts.

Finally, a clearinghouse is a valuable tool for all regional employees involved with the NEPA process. Using a regional repository as a source for pertinent reference materials and previously finalized NEPA documents would contribute greatly to making the NEPA process more efficient.

3.16 Limitations on Actions Before Decisions (40 CFR 1506.1, 516 DM 5.6)

NEPA requires that no actions that have adverse impacts or that limit the choice of alternatives occur until the appropriate process is completed. These include committing funds, personnel resources, or materials that will advance the proposal to a point where alternatives are constrained, where impacts to the environment begin to occur, or where retreat may be impossible or impractical. These actions do not include the reasonable commitment of resources to carry out the necessary studies upon which the EIS and decision document will be based. Applicants are also reasonably subject to these limitations.

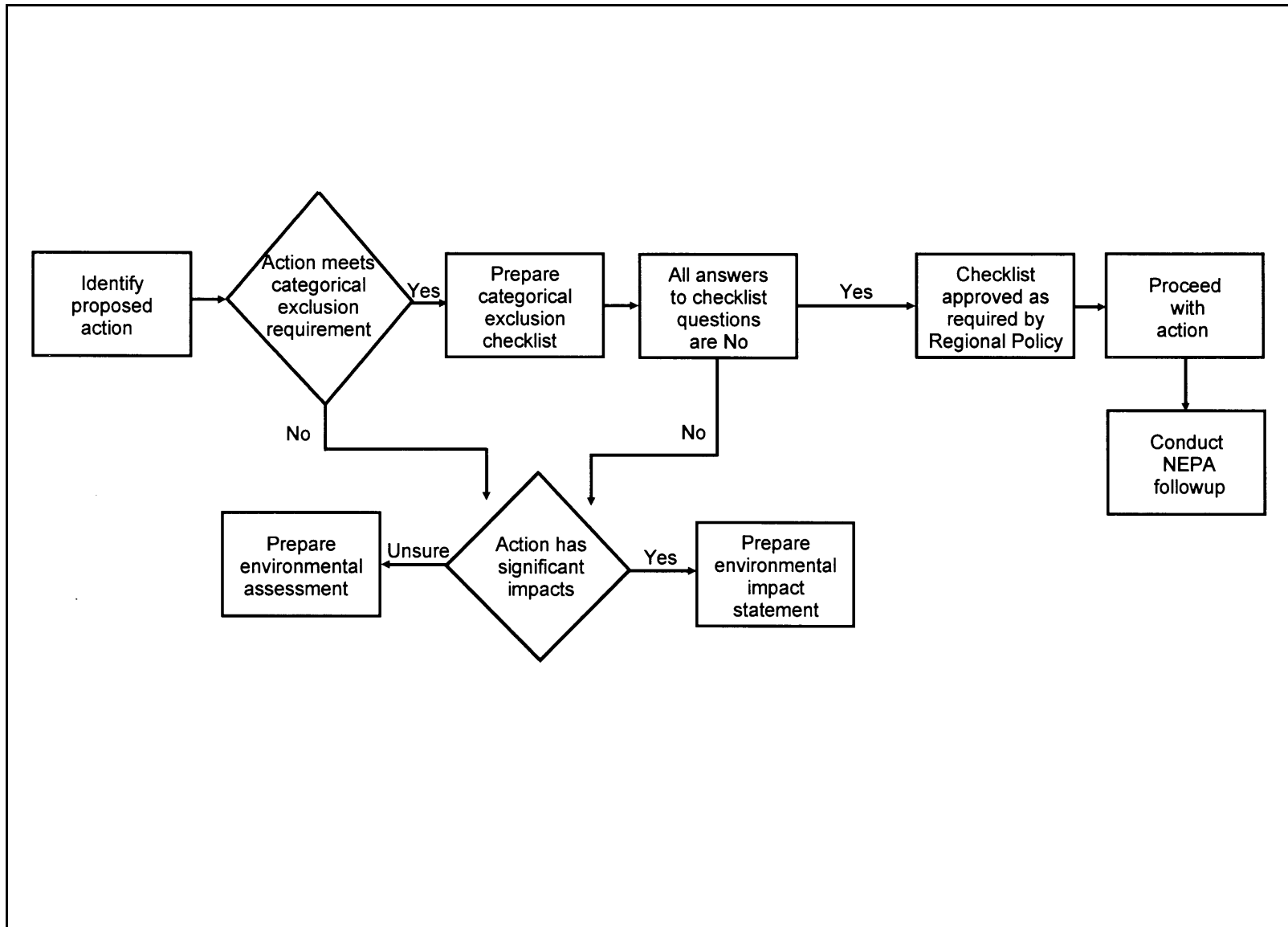
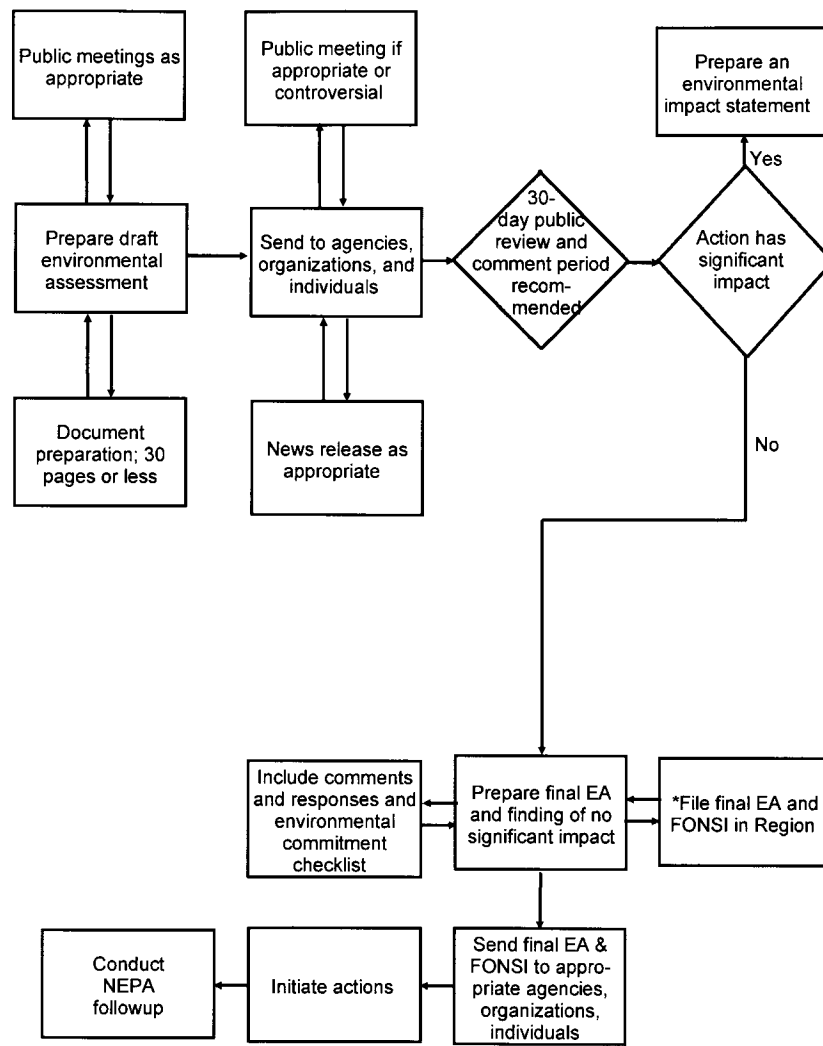


Figure 3.1.—Categorical exclusion process flowchart.



* Optional, depending upon Regional Policy and Procedures.

Figure 3.2.—Environmental assessment process flowchart.

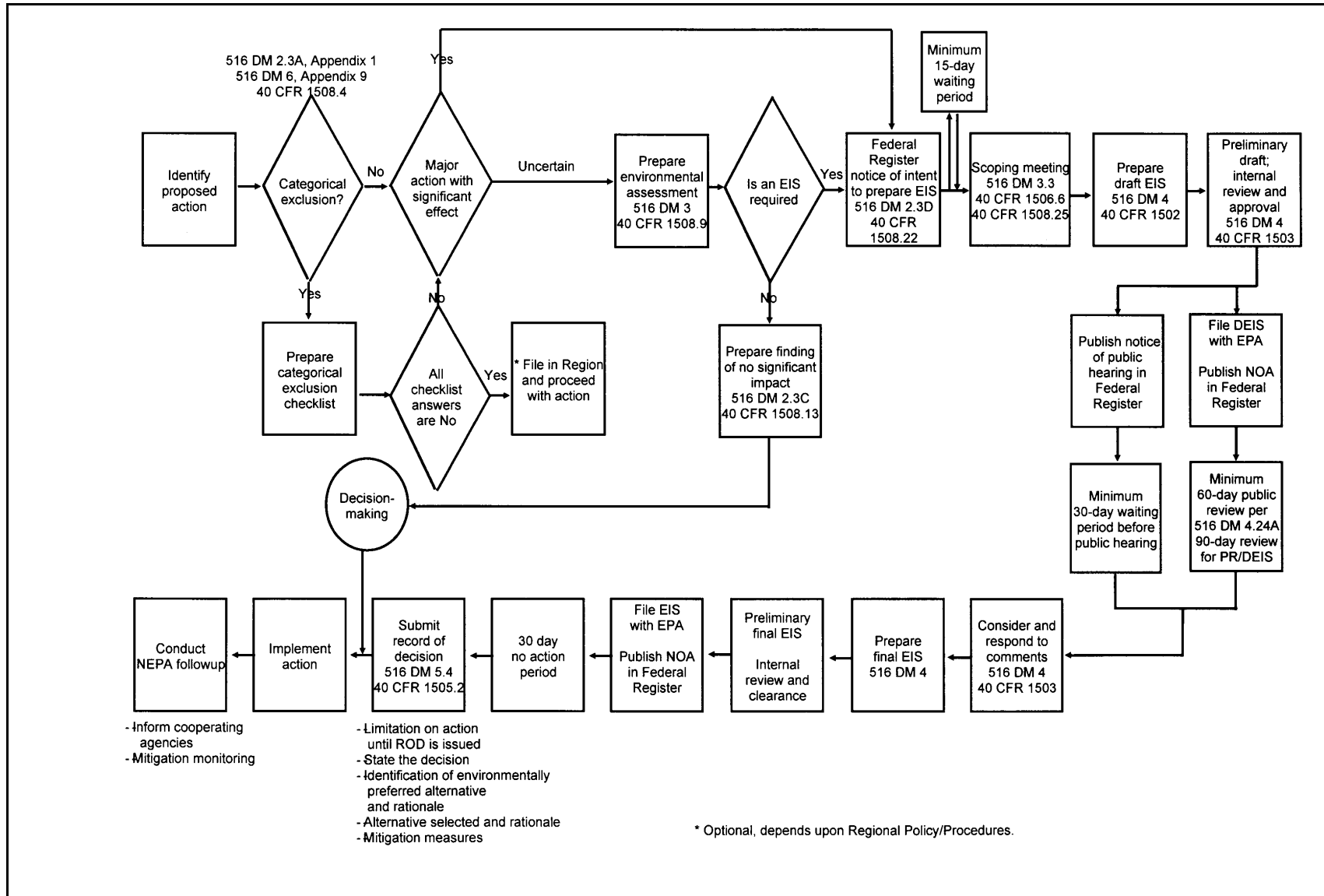


Figure 3.3.—National Environmental Policy Act process flowchart.

DEPARTMENT OF THE INTERIOR DEPARTMENTAL MANUAL

516 DM 2
Appendix 1

Chapter 2 Appendix 1, Departmental Categorical Exclusions

The following actions are categorical exclusions pursuant to 516 DM 2.3A(2). However, environmental documents will be prepared for individual actions within these categorical exclusions if the exceptions listed in 516 DM 2, Appendix 2, apply.

1.1 Personnel actions and investigations and personnel services contracts.

1.2 Internal organizational changes and facility and office reductions and closings.

1.3 Routine financial transactions, including such things as salaries and expenses, procurement contracts, guarantees, financial assistance, income transfers, audits, fees, bonds, and royalties.

1.4 Law enforcement and legal transactions, including such things as arrests, investigations, patents, claims, legal opinions, and judicial proceedings including their initiation, processing, settlement, appeal, or compliance.

1.5 Regulatory and enforcement actions, including inspections, assessments, administrative hearings, and decisions; when the regulations themselves or the instruments of regulations (leases, permits, licenses, etc.) have previously been covered by the NEPA process or are exempt from it.

1.6 Non-destructive data collection, inventory (including field, aerial, and satellite surveying and mapping), study, research, and monitoring activities.

1.7 Routine and continuing government business, including such things as supervision, administration, operations, maintenance, and replacement activities having limited context and intensity; e.g., limited size and magnitude or short-term effects.

1.8 Management, formulation, allocation, transfer, and reprogramming of the Department's budget at all levels. (This does not exempt the preparation of environmental documents for proposals included in the budget when otherwise required.)

1.9 Legislative proposals of an administrative or technical nature, including such things as changes in authorizations for appropriations, and minor boundary changes and land transactions; or having primarily economic, social, individual or institutional effects; and comments and reports on referrals of legislative proposals.

1.10 Policies, directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature; or the environmental effects of which are too broad, speculative or conjectural to lend themselves to meaningful analysis and will be subject collectively or case-by-case.

1.11 Activities which are educational, informational, advisory or consultative to other agencies, public and private entities, visitors, individuals or the general public.

9/26/84 #2596
Replaces 3/18/80 #2244

Figure 3.4.—Departmental categorical exclusions.

DEPARTMENT OF THE INTERIOR

DEPARTMENTAL MANUAL

516 DM 2
APPENDIX 2

Chapter 2 Appendix 2. Exceptions to Categorical Exclusions

The following exceptions apply to individual actions within categorical exclusions (CX). Environmental documents must be prepared for actions which may:

- 2.1 Have significant adverse effects on public health or safety.
- 2.2 Have adverse effects on such unique geographic characteristics as historic or cultural resources, park, recreation or refuge lands, wilderness areas, wild or scenic rivers, sole or principal drinking water aquifers, prime farmlands, wetlands, floodplains, or ecologically significant or critical areas, including those listed on the Department's National Register or Natural Landmarks.
- 2.3 Have highly controversial environmental effects.
- 2.4 Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.
- 2.5 Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.
- 2.6 Be directly related to other actions with individually insignificant but cumulatively significant environmental effects.
- 2.7 Have adverse effects on properties listed or eligible for listing on the National Register of Historic Places.
- 2.8 Have adverse effects on species listed or proposed to be listed on the List of Endangered or Threatened Species, or have adverse effects on designated Critical Habitat for these species.
- 2.9 Require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act.
- 2.10 Threaten to violate a Federal, State, local, or tribal law or requirement imposed for the protection of the environment.

9/26/84 #2596
New

9-141

Figure 3.5.—Departmental exceptions to categorical exclusions.

DEPARTMENT OF THE INTERIOR DEPARTMENTAL MANUAL

516 DM 6
Appendix 9

Bureau of Reclamation

516 DM 6 Appendix 9

Bureau of Reclamation

9.4. *Categorical Exclusions.* In addition to the actions listed in the Departmental categorical exclusions outlined in appendix 1 of 515 DM 2, many of which Reclamation also performs, the following Reclamation actions are designated categorical exclusions unless the action qualifies as an exception under 516 DM 2.3A(3):

A. General Activities

1. Changes in regulations or policy directives and legislative proposals where the impacts are limited to economic and/or social effects.
2. Training activities of enrollees assigned to the various youth programs. Such training may include minor construction activities for other entities.
3. Research activities, such as nondestructive data collection and analysis, monitoring, modeling, laboratory testing, calibration, and testing of instruments or procedures and non-manipulative field studies.

B. Planning Activities

1. Routine planning investigation activities where the impacts are expected to be localized, such as land classification surveys, topographic surveys, archeological surveys, wildlife studies, economic studies, social studies, and other study activity during any planning, preconstruction, construction, or operation and maintenance phases.
2. Special, status, concluding, or other planning reports that do not contain recommendations for action, but may or may not recommend further study.
3. Data collection studies that involve test excavations for cultural resources

investigations or test pitting, drilling, or seismic investigations for geologic exploration purposes where the impacts will be localized.

C. Project Implementation Activities

1. Classification and certification of irrigable lands.
2. Minor acquisition of land and rights-of-way or easements.
3. Minor construction activities associated with authorized projects which correct unsatisfactory environmental conditions or which merely augment or supplement, or are enclosed within existing facilities.
4. Approval of land management plans where implementation will only result in minor construction activities and resultant increased operation and maintenance activities.

D. Operators and Maintenance Activities

1. Maintenance, rehabilitation, and replacement of existing facilities which may involve a minor change in size, location, and/or operation.
2. Transfer of the operation and maintenance of Federal facilities to water districts, recreation agencies, fish and wildlife agencies, or other entities where the anticipated operation and maintenance activities are agreed to in a contract or a memorandum of agreement, follow approved Reclamation policy, and no major change in operation and maintenance is anticipated.
3. Administration and implementation of project repayment and water service contracts, including approval of organizational or other administrative changes in contracting entities brought about by inclusion or exclusion of lands in these contracts.

6/8/83 #2505
Replaces 8/25/80 #2291

Figure 3.6.—Bureau of Reclamation categorical exclusions.

4. Approval, execution, and implementation of water service contracts for minor amount of long-term water use or temporary or interim water use where the action does not lead to long-term changes and where the impacts are expected to be localized.

5. Approval of changes in pumping power and water rates charged contractors by Reclamation for project water service or power.

6. Execution and administration of recordable contracts for disposal of excess lands.

7. Withdrawal, termination, modification, or revocation where the land would be opened to discretionary land laws and where such future discretionary actions would be subject to the NEPA process, and disposal or sale of acquired lands where no major change in usage is anticipated.

8. Renewal of existing grazing, recreation management, or cabin site leases which do not increase the level of use or continue unsatisfactory environmental conditions.

9. Issuance of permits for removal of gravel or sand by an established process from existing quarries.

10. Issuance of permits, licenses, easements, and crossing agreements which provide right-of-way over Reclamation lands where the action does not allow for or lead to a major public or private action.

11. Implementation of improved appearance and soil and moisture conservation programs where the impacts are localized.

12. Conduct of programs of demonstration, educational, and technical assistance to water user organizations for improvement of project and on-farm irrigation water use and management.

13. Follow-on actions such as access agreements, contractual arrangements, and operational procedures for hydropower facilities which are on or appurtenant to Reclamation facilities or lands which are permitted or licensed by the Federal Energy Regulatory Commission (FERC) when FERC has accomplished compliance with NEPA (including actions to be taken by Reclamation) and when Reclamation's environmental concerns have been accommodated in accordance with Reclamation/FERC Memorandum of Understanding of June 22, 1981.

14. Approval, renewal, transfer, and execution of an original, amendatory, or supplemental water service or repayment contract where the only result will be to implement an administrative or financial practice or change.

15. Approval of second party water sales agreements for small amounts of water (usually less than 10 acre-feet) where Reclamation has an existing water sales contract in effect.

16. Approval and execution of contracts requiring the repayment of funds furnished or expended on behalf of an entity pursuant to the Emergency Fund Act of June 26, 1948; (43 U.S.C. 502) where the action taken is limited to the original location of the damaged facility.

17. Minor safety of dams construction activities where the work is confined to the dam, abutment areas, or appurtenant features, and where no major change in reservoir or downstream operation is anticipated as a result of the construction activities.

E. Grant and Loan Activities

1. Rehabilitation and Betterment Act loans and contracts which involve repair, replacement or modification of equipment in existing structures or minor repairs to existing dams, canals, laterals, drains, pipelines, and similar facilities.

2. Small Reclamation Projects Act grants and loans where the work to be done is confined to areas already impacted by farming or development activities, work is considered minor, and where the impacts are expected to be localized.

3. Distribution System Loans Act loans where the work to be done is confined to areas already impacted by farming or developing activities, work is considered minor, and where the impacts are expected to be localized.

4. Disaster Assistance Act studies, construction management, conservation, loans, water purchasing assistance, and water redistribution where the activity is confined to areas already impacted by farming or development; is limited to minor construction or repair, replacement, or modifications of existing facilities; and the impacts are expected to be local in nature.

Figure 3.6.—Bureau of Reclamation categorical exclusions (continued).

